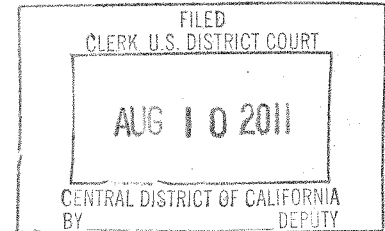


BLECHER & COLLINS, P.C.
 Maxwell M. Blecher (State Bar No. 26202)
mblecher@blechercollins.com
 Donald R. Pepperman (State Bar No. 109809)
dpepperman@blechercollins.com
 Jennifer S. Elkayam (State Bar No. 238619)
jelkayam@blechercollins.com
 515 South Figueroa Street, Suite 1750
 Los Angeles, California 90071-3334
 Telephone: (213) 622-4222
 Facsimile: (213) 622-1656



Attorneys for Plaintiff
 AquaStar Pool Products, Inc.

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

0411 06586 (BM)(PJW)

AQUASTAR POOL PRODUCTS,
 INC., a California corporation,

Plaintiff,

vs.

HAYWARD INDUSTRIES, INC., a
 New Jersey corporation; HAYWARD
 POOL PRODUCTS, INC.,

Defendants.

CASE NO. CV

**CIVIL COMPLAINT FOR
 DAMAGES AND INJUNCTIVE
 RELIEF FOR VIOLATIONS OF:**

**1) SECTION TWO OF THE
 SHERMAN ACT – ACTUAL
 MONOPOLIZATION; 2) SECTION
 TWO OF THE SHERMAN ACT –
 ATTEMPT TO MONOPOLIZE; 3)
 SECTION ONE OF THE
 SHERMAN ACT; 4) SECTION 3
 OF THE CLAYTON ACT; 5)
 INTENTIONAL INTERFERENCE
 WITH PROSPECTIVE
 ECONOMIC ADVANTAGE AND
 ACTUAL CONTRACTUAL
 RELATIONS; AND 6) CAL. BUS.
 & PROF. CODE § 17200 et seq. -
 UNFAIR COMPETITION**

[DEMAND FOR JURY TRIAL]

Plaintiff AquaStar Pool Products, Inc. ("AquaStar") files this
 Complaint against defendants Hayward Industries, Inc., and Hayward Pool
 Products, Inc. (collectively defendant "Hayward") to secure damages and
 injunctive relief, and demanding trial by jury, claims and alleges as follows:

BLECHER & COLLINS

A PROFESSIONAL CORPORATION
 ATTORNEYS AT LAW

I.

SUMMARY OF THE CASE

1. This lawsuit centers around defendant Hayward's deliberate and continuing attempt to monopolize and monopolize the market for residential swimming pool automated suction-side cleaners and replacement parts in the United States. Hayward possesses a market share of approximately 65% in this market.

2. Defendant Hayward conceived and implemented a multifaceted anticompetitive scheme to exclude plaintiff AquaStar from this growing and lucrative market. Within the last few years, AquaStar has developed, manufactured and sold a more efficient and cost-effective competing automatic pool cleaner and a wide array of replacement parts for its own cleaners as well as certain models sold by Hayward. To thwart AquaStar's lower priced competition, defendant Hayward has engaged in a campaign that consists of at least the following anticompetitive and monopolistic acts: (a) induced a group boycott of AquaStar's automatic pool cleaner products; (b) conditioned the payment or allowance of discounts, rebates and/or other incentives provided to actual and potential customers of Hayward pool products on an agreement or understanding not to purchase or distribute AquaStar automatic pool cleaners/replacement parts; (c) offered retroactive rebates or bribes to customers who agree not to distribute or sell AquaStar pool cleaners/replacement parts; (d) itself purchased quantities or the inventory of AquaStar automatic pool cleaners/replacements parts from retailers/distributors for the purpose of depriving consumers of the opportunity or alternative of purchasing such competitive AquaStar products; and (e) threatened to revoke or terminate Hayward-authorized dealer or warranty status from buyers/distributors that elect to purchase or distribute AquaStar pool cleaners/replacement parts.

3. As a consequence of Hayward's conduct, competition in this product market has been suppressed and virtually eliminated and consumers in that market have suffered a loss of choice and have been required to pay higher prices for cleaners and replacement parts to Hayward than would otherwise be the case in a competitive market. Plaintiff AquaStar, the competitive process and consumers have suffered antitrust injury by reason of Hayward's unlawful, unfair and trade restraining conduct.

11.

JURISDICTION AND VENUE

4. This Complaint is filed and this action is instituted under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15, 26) to recover the damages caused by, and to secure injunctive relief against, defendant Hayward for its past and continuing violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) and Section 3 of the Clayton Act (15 U.S.C. § 14), as alleged herein.

5. This Court has original and exclusive jurisdiction over the subject matter of this civil action under 15 U.S.C. § 15 and 28 U.S.C. §§ 1331 and 1337. This Court may exercise supplemental jurisdiction over the state law based claims pursuant to 28 U.S.C. § 1367. Defendant Hayward maintains an office and transacts business on a systematic and continuous basis within this District, and may be found here, within the meaning of 15 U.S.C. §§ 15, 22 and 28 U.S.C. § 1391. Further, the unlawful acts alleged herein were performed and occurred in material part within this District.

11

INTERSTATE COMMERCE

6. The actions complained of herein have, and will, restrain and adversely affect interstate commerce in that defendant Hayward sells its

1 products and services across state lines. Further, defendant Hayward
2 purchases goods and supplies in interstate commerce.

3 IV.

4 **THE PARTIES**

5 7. Defendant Hayward Industries, Inc., is a corporation organized
6 and existing under the law of New Jersey with its corporate headquarters
7 located in Elizabeth, New Jersey. Defendant Hayward also has a
8 manufacturing facility located in Pomona, California. Defendant Hayward
9 Pool Products, Inc., is a wholly owned subsidiary/division of defendant
10 Hayward Industries, Inc.

11 8. Plaintiff AquaStar Pool Products, Inc., is a corporation organized
12 and existing under the laws of California with its principal place of business
13 located at 1666 Garnet Avenue, San Diego, California 92109. AquaStar
14 also has manufacturing facilities located in Ventura and Valencia,
15 California.

16 V.

17 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

18 9. The National Swimming Pool Foundation has estimated that there
19 are approximately 10 million swimming pools (above and in-ground) in the
20 United States. Most swimming pools are located in warm weather states,
21 which primarily include: California, Nevada, Arizona, Texas and Florida. At
22 least 60%-70% of swimming pools use some type of automated pool
23 cleaner.

24 10. In the 1970s, the first automatic vacuum pool cleaner was
25 introduced. Automated pool cleaners require minimal human involvement
26 or intervention to sweep and clean a pool. Currently, there are three main
27 types of automated pool cleaners in use in the United States, and they are
28 classified by the drive/propulsion mechanism utilized: (a) suction-side

1 pressure driven; (b) return-side/pressure driven; and (c) robotic/electronic.

2 11. The most popular and widely used automatic pool cleaner is the
3 suction-side pressure vacuum driven, which is the product at issue in this
4 lawsuit. Suction-side cleaners currently comprise approximately 70%-80%
5 of the automatic pool cleaners manufactured and sold in the United States.
6 This type of pool cleaner unit is typically connected with a small diameter
7 flexible rubber/plastic hose to a swimming pool's skimmer box suction inlet,
8 or to a dedicated vacuum line located on the sidewall of the pool. The
9 suction supplied by the pool's existing filtration pump causes the cleaner
10 unit to move forward along the floor and walls of the pool while sucking up
11 dirt, debris and sediment as it moves along. A filter cannister integrated
12 into the vacuum hose and/or the pool's main filter system collects the dirt,
13 debris and sediment collected by the cleaner unit. Suction-side cleaners
14 can be installed in 10-15 minutes without the necessity of tools. The
15 average cost for an automated suction-side pool cleaner ranges from
16 approximately \$300 to \$600.

17 12. Return-side/pressure driven type automatic pool cleaners require
18 high amounts of flow or movement to function. Consequently, a separate
19 dedicated electric pump (in addition to the pool's existing filtration pump) is
20 required for the use of a pressure driven pool cleaner unit. In some cases,
21 the pool's plumbing can be reworked or modified to accommodate this type
22 of cleaner. The dirt, debris and sediment picked up by the cleaner is
23 collected in a filter bag attached to the unit. The cost of installing a
24 separate dedicated booster pump is substantial (\$400-\$600) as is the
25 additional electricity cost to power the pump. For these reasons, this type
26 of technology/process is not as popular or competitive to suction-side pool
27 cleaners. These cleaners typically range in cost from \$300-\$900 for the
28 unit alone. Pressure-side pool cleaners currently comprise approximately

1 10%-15% of all automated cleaners sold.

2 13. Finally, the third category of automated pool cleaners are
3 robotic/electronic types. Robotic cleaners are used almost exclusively in
4 commercial swimming pools and are very costly to acquire and operate. A
5 robotic/electronic automated cleaner can range in cost from \$500-\$5,000.
6 Most of these units also are powered by electricity and require that an
7 electric cord be placed in the pool and be plugged into an external power
8 source. This pool cleaner has a self-contained propulsion vacuum and
9 filtration systems and which operate completely independent of the pool's
10 pump and filter. By reason of the cost, dangers and complexity associated
11 with these types of pool cleaners, only approximately 5%-10% of the
12 automated pool cleaner business is occupied by such cleaners.

13 14. Suction-side automated pool cleaners are not considered to be
14 substitutes for, and are not reasonably interchangeable with, either return-
15 side/pressure driven or robotic type pool cleaners. Nor are either return-
16 side/pressure driven or robotic type automated pool cleaners substitutes
17 for, or reasonably interchangeable with, suction-side automated pool
18 cleaners.

19 15. Defendant Hayward touts itself as the largest manufacturer and
20 supplier of residential pool equipment in the world. Hayward manufactures
21 and sells a broad array of residential swimming pool and spa products,
22 including electric pumps, filters, heaters, chlorination systems, heat pumps,
23 lighting fixtures and automated pool cleaners (suction-side and robotic).
24 Hayward claims that it has sold billions of dollars worth of swimming pool
25 and related products in the United States. The suction-side automated
26 pool cleaners sold by Hayward include the Navigator, PoolVac and
27 Arneson lines. Hayward also sells replacement parts for its pool cleaner
28 units. These pool cleaners and associated replacement parts have been

1 marketed and sold by Hayward over the last 20 years.

2 16. Plaintiff AquaStar was founded in October 2003 on the belief that
3 better equipment leads to better, safer, more enjoyable swimming pool and
4 spa experiences. AquaStar's mission and goal was to invent, design and
5 manufacture innovative pool products that keep consumers safe and its
6 customers satisfied. AquaStar initially produced and supplied quality pool
7 and spa drains and suction outlet covers, skimmers and other plastic
8 fittings. All of AquaStar's products are designed, engineered,
9 manufactured and assembled in the United States.

10 17. In or about the Summer of 2009, AquaStar began to plan, design
11 and develop a line of suction-side automatic pool cleaners known as the
12 StarzTruck, to compete with Hayward's line of pool cleaners. AquaStar's
13 StarzTruck units sell for approximately 25% less than comparable Hayward
14 pool cleaner units. AquaStar also designed and engineered various
15 replacement parts and kits to be used to repair and maintain Hayward's
16 automatic pool cleaners. These products are marketed and sold by
17 plaintiff AquaStar under the ProStar brand name.

18 18. Hayward has openly expressed its discontent with AquaStar's
19 recent entry into this market with a competing automatic pool cleaner and
20 introduction of less costly replacement parts (20%-40% less) for use in
21 repairing Hayward pool cleaner units. Indeed, Hayward has sent letters
22 and e-mails, and made verbal statements, to actual and prospective buyers
23 and distributors of AquaStar's pool cleaner units/parts threatening and
24 discouraging them from doing business with its much smaller rival
25 AquaStar. Recently, at a trade convention in Vail, Colorado, Hayward's
26 Western Division Vice-President, George Metkovich, approached
27 AquaStar's Co-Founder and President, Olaf Mjelde, and in substance and
28 effect threatened him that Hayward would do whatever it takes to keep

1 AquaStar out of the market, including selling product at Hayward's cost.

2 19. The overwhelming majority of swimming pool products are sold
3 to and distributed through a small number of regional and national
4 networks of distributors. These distributors typically resell to thousands of
5 retailers and pool builders and contractors. Open and unrestricted access
6 to these multi-outlet regional/national distributors is absolutely critical to a
7 manufacturer's ability to get its pool products into the proper distribution
8 channels and effectively compete in the United States market. Because of
9 the structure of the market, plaintiff AquaStar cannot adequately or
10 practicably reach or sell directly to these retailers, pool builders and
11 contractors by reason of their preference to deal with wholesale distributors
12 that carry and stock products from multiple manufacturers. Consequently,
13 to be competitive and meaningfully penetrate the market, plaintiff AquaStar
14 must have access to these regional and national distributors.

15 20. Hayward has undertaken bold, calculated and systematic
16 policies and steps to deliberately hinder and foreclose AquaStar's access
17 to these distributors. On April 15, 2010, defendant Hayward sent a letter to
18 its customers (distributors and retailers) representing that "non-genuine
19 Hayward replacement parts" being manufactured and sold by competitors
20 for its automatic pool cleaners "do not use comparable materials,
21 manufacturing specifications or certified testing." The letter also expresses
22 Hayward's view that non-Hayward replacement parts are not safe and can
23 cause "inferior performance, ha[ve] the potential to shorten the life of the
24 original product, and can also damage associated equipment or pool
25 surfaces." Currently, AquaStar is the only competitor (in addition to
26 Hayward) that produces and sells replacement parts for Hayward's pool
27 cleaners.

28 21. The widely disseminated Hayward customer letter also set forth

1 the following multi-element policy, which applies to automatic pool cleaner
2 units/parts: (a) Hayward will only guarantee the quality, performance and
3 safety of its automatic pool cleaner products only when used in
4 combination with genuine Hayward-manufactured replacement parts and
5 that use of non-Hayward parts "will invalidate any warranty that may remain
6 on the product"; (b) in order "[t]o maintain Hayward Authorized Service
7 Center status and referrals, service centers must use Genuine Hayward
8 parts exclusively when it relates to Hayward products"; (c) "[p]articipation in
9 any Hayward Distributor, Dealer, or Service Provider incentive program
10 [rebates/discounts] is dependent upon the exclusive use of Genuine
11 Hayward parts for all" automatic pool "cleaner parts. Failure to comply will
12 result in the loss of all program benefits"; and (d) "[m]isrepresentation of
13 generic parts as Genuine Hayward parts will result in the loss of all
14 Hayward incentives, rebates, or programs and may be subject to legal
15 action."

16 22. This anticompetitive and exclusionary policy implemented by
17 Hayward induced a group boycott and/or concerted refusal among and
18 between Hayward's distributors/retailers not to do business with or
19 purchase pool cleaner products from AquaStar. As a direct and proximate
20 result of Hayward's unlawful conduct, various distributors have refused to
21 deal with AquaStar, cancelled pending orders and/or returned product that
22 had been purchased from AquaStar.

23 23. As alleged above, defendant Hayward is the leading
24 manufacturer and seller of a wide variety of pool/spa products which
25 distributors, and their retailer, builder and contractor customers, need to
26 have. Because of the breadth of the products (beyond just the pool
27 cleaner products) offered by defendant Hayward, its threats not to deal
28 with customers and terminate or withdraw rebate and incentive programs

1 poses a potential significant impact and is a serious weapon in effectively
2 dissuading these distributors from not purchasing from or dealing with
3 plaintiff AquaStar.

4 24. As a follow-up, on February 22, 2011, Hayward sent out another
5 "policy" letter to its customers for automatic pool cleaner products. This
6 letter touted the effectiveness of Hayward's previously instituted
7 exclusionary policy: "We are pleased to report the response from you, our
8 loyal Hayward customers, to this policy was extremely positive." The new
9 policy "memo" was intended to notify customers of the "expansion of the
10 policy" to also broadly include: "Hayward customers that wish to continue
11 participating in any Hayward Distributor, Dealer, or Service Provider
12 incentive program may not sell copied or 'knock-off' Hayward automatic
13 pool cleaner whole-goods that use parts that Hayward believes are
14 positioned as direct replacements for Hayward genuine parts. Failure to
15 comply will result in the loss of all program benefits."

16 25. Hayward's customers have been specifically advised by
17 Hayward that these policies apply to purchases of automatic pool cleaner
18 replacement parts manufactured and sold by plaintiff AquaStar.

19 26. Hayward has also targeted specific actual and potential
20 buyers/distributors of AquaStar pool cleaner units/replacement parts with
21 threats and anticompetitive tactics. For example, Pool Corp. (200 stores in
22 the United States), who is AquaStar's largest customer/distributor for non-
23 pool cleaner products, has advised that it will not buy or distribute
24 AquaStar's line of pool cleaner units/parts based on Hayward's threat that
25 because to do so would result in the loss of Hayward's rebate program on
26 all products. Pool Corp. had placed automatic pool cleaner product orders
27 with AquaStar and then within a few days cancelled those orders.
28 Similarly, in April 2010, pool and spa product wholesale distributors

1 Gorman Company (Florida) and HornerXpress (Florida) ordered pool
2 cleaner product samples from AquaStar and then advised that they could
3 not sell AquaStar products because of termination threats from defendant
4 Hayward.

5 27. At a recent conference of Independent Pool and Spa Service
6 Association ("IPSSA") members in Corona, California, Hayward's National
7 Sales Manager stood up and addressed the attendees. He discouraged
8 members from buying any AquaStar pool cleaners/parts by threatening to
9 eliminate Hayward's rebate/incentive program for any distributors that were
10 considering purchasing AquaStar products. The IPSSA is headquartered
11 in Los Alamitos, California, and its membership includes the leading pool
12 service professionals, manufacturers and distributors of swimming
13 pool/spa products in the United States.

14 28. Florida Water Products ("FWP") is a large pool product
15 wholesale distributor with multiple locations in Florida and Texas. Between
16 2008 and 2011, AquaStar sold in excess of \$150,000 of non-pool cleaner
17 products to FWP. In February 2011, FWP placed an order with AquaStar
18 to purchase in excess of \$100,000 of automatic pool cleaner units. The
19 units were ready to ship when FWP abruptly put the order on hold and then
20 subsequently cancelled the order due to threats from defendant Hayward
21 that it would stop selling any products to FWP if they purchased any pool
22 cleaner products from AquaStar.

23 29. Keller Supply Company (Leisure Division) is a large independent
24 wholesale pool product supplies distributor serving the Pacific Northwest.
25 In September 2010, Keller ordered pool cleaner replacement parts
26 samples from plaintiff AquaStar but then advised that they could not stock
27 or distribute such parts based on threats from Hayward. In
28 January/February 2011, Keller placed a small order for parts then ceased

1 further purchases due to further and continued threats from Hayward. In
2 March 2011, for an open house show, Keller ordered a pallet (15 units) of
3 AquaStar StarzTruck pool cleaner units. After Keller received the pallet, a
4 Hayward representative paid a visit and through threats intimidated Keller
5 into returning the pallet to AquaStar.

6 30. Pool Electrical Products, Inc., is a wholesale independent
7 distributor of pool products (18 branches) in California and Texas. In early
8 2011, this distributor purchased a significant amount of StarzTruck pool
9 cleaners and replacement parts from AquaStar. To prevent these products
10 from getting into the hands of consumers, Hayward purchased and took
11 possession of Pool Electrical Products, Inc.'s inventory of AquaStar pool
12 cleaner units/parts. The distributor then reported that because of threats it
13 received from Hayward, it could no longer make purchases from AquaStar.

14 31. Defendant Hayward's anticompetitive and predatory conduct has
15 also caused other actual and potential customers to cease purchases from
16 plaintiff AquaStar or to not purchase in the first instance. Such customers,
17 include but are not limited, to the following: Cloud Supply (Arizona); Island
18 Pool & Supply (Hawaii) and H2O Pool Products.

19 VI.

20 CLAIMS FOR RELIEF

21
22 FIRST CAUSE OF ACTION

23 (Actual Monopolization in Violation of

24 Section 2 of the Sherman Act (15 U.S.C. §2))

25 32. Plaintiff AquaStar hereby realleges and incorporates by
26 reference each allegation set forth in Paragraphs 1 through 31, as if set
27 forth in full herein.

28 33. Section 2 of the Sherman Act (15 U.S.C. § 2) prohibits, *inter alia*,

1 the willful monopolization of any part of the trade or commerce among the
2 States.

3 34. The relevant product market (or submarket) for antitrust
4 purposes in this case is defined as residential swimming pool automatic
5 suction-side pool cleaners and associated replacement parts. The relevant
6 geographic market for antitrust purposes is the United States.

7 35. Hayward is an entrenched player and dominates the market for
8 automatic suction-side pressure pool cleaners in the United States,
9 possessing a market share greater than 65%.

10 36. There are significant and high barriers to market entry that
11 prevent other manufacturers from rapidly and meaningfully entering and/or
12 expanding in this relevant market, which include, but are not limited to, the
13 following:

14 (a) Hayward's dominant market position as a monopolist of
15 automatic suction-side pool cleaners with a history of engaging in
16 exclusionary and anticompetitive conduct to eliminate competition;

17 (b) patents, trademarks and other intellectual property rights
18 relating to automatic suction-side pool cleaner products;

19 (c) a substantial up-front capital investment required to
20 penetrate and enter the market and provide pool cleaner units/replacement
21 parts;

22 (d) a significant lead time to design and engineer pool cleaner
23 products/replacement parts and develop a reputation such that the
24 products can be successfully marketed and sold to buyers; and

25 (e) requirement of access to a nationwide sales and
26 distribution network.

27 37. Defendant Hayward has monopoly power in the relevant market,
28 as reflected by, *inter alia*, its substantial share of the automatic suction-

1 side pool cleaner market; its ability to exclude competition in the market;
2 and its ability to charge supracompetitive prices for automatic pool
3 cleaners/replacement parts.

4 38. Defendant Hayward's monopoly position in the relevant market
5 has been acquired and maintained through intentional exclusionary and
6 predatory conduct, as opposed to business acumen, or historic accident or
7 by virtue of offering a superior product or service, greater efficiency or
8 lower prices.

9 39. Plaintiff AquaStar has the requisite standing to assert antitrust
10 claims against defendant Hayward because it is a participant and
11 competitor in the relevant market.

12 40. The anticompetitive scheme and plan of defendant Hayward to
13 attempt to monopolize and/or monopolize the above-described trade and
14 commerce has been done with the intent to specifically eliminate plaintiff
15 AquaStar as a viable competitor and threat to Hayward's automatic pool
16 cleaner/replacement parts business, and to reduce competition in general.
17 Hayward's overall exclusionary scheme to monopolize consists of at least
18 the following anticompetitive acts/conduct to be viewed as a whole:

19 (a) successfully threatened, intimidated and coerced actual
20 and potential purchasers of AquaStar pool products not to deal with
21 AquaStar;

22 (b) induced, organized and implemented a group boycott of or
23 concerted refusal to deal among buyers/distributors not to distribute or
24 purchase plaintiff AquaStar's automatic pool cleaner/replacement part
25 products;

26 (c) conditioned the payment or allowance of discounts and
27 rebates provided on the purchase of Hayward pool equipment products,
28 including automatic pool cleaners/replacement parts, on an agreement not

1 to deal with or purchase competitive pool cleaner products/parts from
2 AquaStar;

3 (d) purchased quantities or inventories of AquaStar automatic
4 pool cleaners/replacement parts from retailers/distributors in order to
5 deprive consumers from the opportunity or alternative to purchase such
6 competitive products; and

7 (e) threatened to revoke or terminate Hayward-authorized
8 dealer or warranty status from buyers/distributors that elect to purchase or
9 distribute AquaStar pool cleaners/replacement parts.

10 41. Conduct is anticompetitive when it unnecessarily excludes or
11 handicaps competitors in order to gain or maintain a monopoly.

12 Anticompetitive or exclusionary practices are acts designed to deter
13 potential rivals from entering the market or prevent existing rivals from
14 increasing their output. Anticompetitive acts are not competition on the
15 merits, but instead acts that have the effect of preventing or excluding
16 competition or frustrating the efforts of other companies to compete for
17 customers within the relevant market. Conduct by a monopolist that
18 constitutes a deliberate effort to discourage customers from doing
19 business with its smaller rivals is anticompetitive.

20 42. Defendant Hayward's anticompetitive and exclusionary conduct
21 described herein is not motivated or driven by technological or efficiency
22 concerns, and has no valid or legitimate business justification. Rather, its
23 purpose and effect is to ensure that plaintiff AquaStar and other
24 competitive rivals in the relevant market cannot successfully invade or
25 erode defendant Hayward's dominant and entrenched market position.

26 43. During the relevant time period, defendant Hayward and plaintiff
27 AquaStar have both designed, manufactured, marketed and sold
28 residential swimming pool automatic suction-side pool cleaners and

1 associated replacement parts in the United States. The marketing,
2 distribution and sale of such products directly involves, and substantially
3 affects, interstate commerce. The violations of the Sherman and Clayton
4 Acts alleged herein adversely, directly and substantially affect the flow of
5 such products in interstate commerce.

6 44. As alleged herein, defendant Hayward has engaged in an
7 anticompetitive scheme to prevent plaintiff AquaStar and other competitors
8 from manufacturing and selling competing automatic suction-side pool
9 cleaners and replacement parts, all for the purpose of maintaining and
10 increasing Hayward's market share and supracompetitive pricing on its
11 automatic pool cleaners/replacement parts.

12 45. The aforesaid conduct of Hayward has produced antitrust injury,
13 and unless enjoined by this Court, will continue to produce at least the
14 following anticompetitive, exclusionary and injurious effects upon
15 competition in interstate commerce:

16 (a) competition in the development of automatic pool cleaner
17 products/replacement parts has been substantially and unreasonably
18 restricted, lessened, foreclosed and eliminated;

19 (b) barriers to entry into the market have been raised;

20 (c) consumers choice has been, and will continue to be,
21 significantly limited and constrained as to selection, price and quality of
22 automatic pool cleaner products/replacement parts;

23 (d) consumer access to AquaStar's competitive pool cleaner
24 products will be artificially restricted and reduced and its products will
25 continue to be excluded from the market;

26 (e) the market for development and sale of automatic suction-
27 side pool cleaner products will continue to be artificially restrained or
28 monopolized; and

1 (f) Hayward will continue to charge supracompetitive prices to
2 the detriment of consumers.

3 46. Defendant Hayward's predatory and exclusionary conduct has
4 caused antitrust injury to plaintiff AquaStar, competition and consumers.

5 47. By reason of, and as a direct and proximate result of, defendant
6 Hayward's anticompetitive and exclusionary practices and conduct, plaintiff
7 AquaStar has suffered, and will continue to suffer, financial injury to its
8 business and property. As a result, plaintiff has been deprived of revenue
9 and profits it would have otherwise made, has suffered diminished market
10 growth and sustained a loss of goodwill. Plaintiff AquaStar has not yet
11 calculated the precise extent of its past damages and cannot now estimate
12 with precision the future damages that continue to accrue, but when it does
13 so, it will seek leave of the Court to insert the amount of the damages
14 sustained herein.

15 SECOND CAUSE OF ACTION

16 (Attempted Monopolization in Violation of 17 Section 2 of the Sherman Act (15 U.S.C. § 2))

18 48. Plaintiff AquaStar hereby realleges and incorporates by
19 reference each allegation set forth in Paragraphs 1 through 47, as if set
20 forth in full herein.

21 49. Section 2 of the Sherman Act (15 U.S.C. § 2) prohibits, *inter alia*,
22 attempts to monopolize any part of the trade or commerce among the
23 States.

24 50. The relevant product market (or submarket) for antitrust
25 purposes in this case is defined as residential swimming pool automatic
26 suction-side pool cleaners and associated replacement parts. The relevant
27 geographic market for antitrust purposes is the United States.

28 51. Defendant Hayward's conduct and practices are anticompetitive,

1 predatory and/or exclusionary. Hayward's overall unlawful scheme is
2 described in paragraph 40, above.

3 52. Plaintiff AquaStar has the requisite standing to assert antitrust
4 claims against defendant Hayward because it is a participant and
5 competitor in the relevant market.

6 53. Absent action by this Court to enjoin and preclude defendant
7 Hayward from continuing its anticompetitive and exclusionary conduct,
8 there is a dangerous probability that Hayward will succeed in obtaining a
9 monopoly in the relevant market (or continue to monopolize), including the
10 power to set prices, reduce output or exclude competition in the market for
11 automatic suction-side pool cleaners/replacement parts.

12 54. Defendant Hayward has undertaken its anticompetitive and
13 exclusionary conduct with the purpose of monopolizing, and with the
14 deliberate and specific intent to monopolize the market for automatic
15 suction-side pool cleaners in the United States. Defendant Hayward
16 specifically intends to eliminate, destroy or foreclose meaningful
17 competition in the relevant market through the tactics and agreements
18 described above. Hayward's conduct discourages and/or precludes
19 buyers/distributors of automatic pool cleaners/replacement parts from
20 dealing or contracting with competing manufacturers, such as plaintiff
21 AquaStar. Hayward's scheme is designed to exclude and thwart
22 competition while allowing it to charge supracompetitive prices for its
23 automatic pool cleaners/replacement parts.

24 55. As described above, significant and high barriers to market entry
25 exist that preclude or discourage new manufacturers from entering the
26 relevant market. Significant barriers to expansion also exist because only
27 a small number of competitors have managed to marginally penetrate this
28 market.

1 56. Defendant Hayward's anticompetitive acts affect a substantial
2 amount of interstate commerce in the relevant market and constitute
3 attempted monopolization in violation of Section 2 of the Sherman Act.
4 Defendant Hayward's conduct is not motivated by technological or
5 efficiency concerns and has no valid or legitimate business justification.
6 Instead, its purpose and effect is to further or preserve its monopoly
7 position and stranglehold, and to injure consumer welfare, plaintiff
8 AquaStar and other competitive rivals in the relevant market.

9 57. Defendant Hayward's anticompetitive acts have caused
10 substantial economic injury to plaintiff AquaStar, and have also injured
11 competition in the relevant market by, *inter alia*, foreclosing, lessening and
12 eliminating competition and depriving buyers/distributors from securing
13 lower cost or higher quality alternatives, or both, for automatic suction-side
14 pool cleaners/replacement parts.

15 58. The aforesaid conduct of Hayward has produced antitrust injury,
16 and unless enjoined by this Court, will continue to produce at least the
17 following anticompetitive, exclusionary and injurious effects upon
18 competition in interstate commerce:

19 (a) competition in the development of automatic pool cleaner
20 products/replacement parts has been substantially and unreasonably
21 restricted, lessened, foreclosed and eliminated;

22 (b) barriers to entry into the market have been raised;

23 (c) consumers choice has been, and will continue to be,
24 significantly limited and constrained as to selection, price and quality of
25 automatic pool cleaner products/replacement parts;

26 (d) consumer access to AquaStar's competitive pool cleaner
27 products will be artificially restricted and reduced and its products will
28 continue to be excluded from the market;

(e) the market for development and sale of automatic suction-side pool cleaner products will continue to be artificially restrained or monopolized; and

(f) Hayward will continue to charge supracompetitive prices to the detriment of consumers.

59. Defendant Hayward's predatory and exclusionary conduct has caused antitrust injury to plaintiff AquaStar, competition and consumers.

60. By reason of, and as a direct and proximate result of defendant Hayward's practices and conduct, plaintiff AquaStar has suffered, and will continue to suffer, financial injury to its business and property. As a result, plaintiff has been deprived of revenue and profits it would have otherwise made, suffered diminished market growth and sustained a loss of goodwill. Plaintiff AquaStar has not yet calculated the precise extent of its past damages and cannot now estimate with precision the future damages that continue to accrue, but when it does so, it will seek leave of the Court to insert the amount of the damages sustained herein.

THIRD CAUSE OF ACTION

(Unlawful Arrangements in Violation of

Section One of the Sherman Act (15 U.S.C. § 1))

61. Plaintiff AquaStar hereby alleges and incorporates by reference each allegation set forth in Paragraphs 1 through 60 and 76 through 91, as if set forth in full herein.

62. Section 1 of the Sherman Act (15 U.S.C. § 1) prohibits, *inter alia*, agreements or arrangements that unreasonably restrain competition to the detriment of consumers.

63. Hayward's conduct has been highly successful in distorting and/or eliminating competition in the relevant market by forcing customers to choose Hayward automatic suction-side pool cleaners/replacement

1 parts over that of substantially lower priced and/or better quality products
2 from plaintiff AquaStar.

3 64. The relevant product market (or submarket) for antitrust
4 purposes in this case is defined as residential swimming pool automatic
5 suction-side pool cleaners and associated replacement parts. The relevant
6 geographic market for antitrust purposes is the United States.

7 65. Defendant Hayward has sufficient economic power in the
8 relevant market. Hayward's market share is in excess of 65%. Hayward
9 has a significant economic interest in the market and clearly dominates
10 and controls that market.

11 66. Plaintiff AquaStar has the requisite standing to assert antitrust
12 claims against defendant Hayward because it is a participant and
13 competitor in the relevant market.

14 67. The anticompetitive scheme and plan of defendant Hayward to
15 unreasonably restrain trade in the above-described trade and commerce
16 has been done with the intent to specifically eliminate plaintiff AquaStar as
17 a viable competitor and threat to Hayward's automatic pool
18 cleaner/replacement parts business, and to reduce competition in general.
19 These agreements and combinations constitute unreasonable restraints of
20 trade. The overall anticompetitive scheme consists of at least the following
21 acts/conduct to be viewed as a whole:

22 (a) successfully threatened, intimidated and coerced actual
23 and potential purchasers of AquaStar pool products not to deal with
24 AquaStar;

25 (b) induced, organized and implemented a group boycott of or
26 concerted refusal to deal among buyers/distributors not to distribute or
27 purchase plaintiff AquaStar's automatic pool cleaner/replacement part
28 products; and

1 (c) conditioned the payment or allowance of discounts and
2 rebates provided on the purchase of Hayward pool equipment products,
3 including automatic pool cleaners/replacement parts, on an agreement not
4 to deal with or purchase competitive products/parts from AquaStar.

5 68. As a direct result of the foregoing anticompetitive conduct and
6 restrictions on competition, buyers/distributors pay Hayward higher prices
7 for automatic pool cleaners/replacement parts than they would in a fully
8 competitive and open market, output has been limited and the quality and
9 choice of automatic suction-side pool cleaner products has been reduced
10 and diminished in that market. There are no business, technological or
11 efficiency reasons or justifications that require defendant Hayward to
12 impose these anticompetitive conditions and restrictions.

13 69. Hayward's restrictions, threats and arrangements have created a
14 barrier that precludes effective entry by other competitors into the relevant
15 market and the quality and variety of offerings in that market have been
16 reduced and constrained.

17 70. Defendant Hayward's arrangements are unlawful under the
18 antitrust laws when assessed under the "Rule of Reason." The
19 anticompetitive consequences of Hayward's conduct outweigh any
20 procompetitive effects thereof. Due to Hayward's significant market power
21 in the relevant market and the dominant position it has obtained,
22 competition in that market has been significantly impaired by defendant
23 Hayward's conduct.

24 71. The aforesaid conduct of Hayward has produced antitrust injury,
25 and unless enjoined by this Court, will continue to produce at least the
26 following anticompetitive, exclusionary and injurious effects upon
27 competition in interstate commerce:

28 (a) competition in the development of automatic pool cleaner

1 products/replacement parts has been substantially and unreasonably
2 restricted, lessened, foreclosed and eliminated;

3 (b) barriers to entry into the market have been raised;

4 (c) consumers choice has been, and will continue to be,
5 significantly limited and constrained as to selection, price and quality of
6 automatic pool cleaner products/replacement parts;

7 (d) consumer access to AquaStar's competitive pool cleaner
8 products will be artificially restricted and reduced and its products will
9 continue to be excluded from the market;

10 (e) the market for development and sale of automatic suction-
11 side pool cleaner products will continue to be artificially restrained or
12 monopolized; and

13 (f) Hayward will continue to charge supracompetitive prices to
14 the detriment of consumers.

15 72. Defendant Hayward's restrictions and arrangements affect a
16 substantial volume of interstate commerce in the relevant market.

17 73. Defendant Hayward's predatory and exclusionary conduct has
18 caused antitrust injury to plaintiff AquaStar, competition and consumers.

19 74. By reason of, and as a direct and proximate result of defendant
20 Hayward's practices and conduct, plaintiff AquaStar has suffered, and will
21 continue to suffer, financial injury to its business and property. As a result,
22 plaintiff has been deprived of revenues and profits it would have otherwise
23 made, suffered diminished market growth and sustained a loss of goodwill.
24 Plaintiff has not yet calculated the precise extent of its past damages and
25 cannot now estimate with precision the future damages that continue to
26 accrue, but when it does so, it will seek leave of the Court to insert the
27 amount of the damages sustained herein.

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **(Unlawful Exclusionary Arrangements in Violation of**
3 **Section 3 of the Clayton Act (15 U.S.C. § 14))**

4 75. Plaintiff AquaStar hereby alleges and incorporates by reference
5 each allegation set forth in Paragraphs 1 through 74, as if set forth in full
6 herein.

7 76. Section 3 of the Clayton Act (15 U.S.C. § 14), makes it unlawful,
8 *inter alia*, “[f]or any person. . .to lease or make a sale or contract for sale of
9 goods. . .on the condition, agreement, or understanding that the lessee or
10 purchaser thereof shall not use or deal in the goods. . .of a competitor. . .of
11 the lessor or seller, where the effect. . .may be to substantially lessen
12 competition or tend to create a monopoly” in the relevant market. Under
13 Section 3, the conditioning of the offer, allowance or payment of rebates or
14 discounts to preclude or exclude the use of a competitors products is also
15 unlawful. *Id.* Arrangements and contracts whose probable effect is to
16 foreclose competition in a substantial share or segment of the line of
17 commerce affected violate Section 3.

18 77. The relevant product market (or submarket) for antitrust
19 purposes in this case is defined as residential swimming pool automatic
20 suction-side pool cleaners and associated replacement parts. The relevant
21 geographic market for antitrust purposes is the United States.

22 78. Hayward dominates the market for automatic suction-side pool
23 cleaners in the United States, possessing a market share greater than
24 70%.

25 79. There are significant and high barriers to market entry that
26 prevent other manufacturers from rapidly and meaningfully entering and/or
27 expanding in the relevant market, which include but are not limited to the
28 following:

1 (a) Hayward's dominant market position as a monopolist of
2 automatic suction pool cleaners with a history of engaging in exclusionary
3 and anticompetitive conduct to eliminate competition;

4 (b) patents, trademarks and other intellectual property rights
5 relating to automatic suction pool cleaner products;

6 (c) a substantial up-front capital investment required to
7 penetrate and enter the market and provide pool cleaner units/replacement
8 parts;

9 (d) a significant lead time to design and engineer pool cleaner
10 products/replacement parts and develop a reputation such that the
11 products can be successfully marketed and sold to buyers; and

12 (e) requirement of access to a nationwide sales and
13 distribution network.

14 80. Plaintiff AquaStar has the requisite standing to assert antitrust
15 claims against defendant Hayward because it is a participant and
16 competitor in the relevant market.

17 81. The anticompetitive scheme and plan of defendant Hayward to
18 substantially lessen competition and create a monopoly in the above-
19 described trade and commerce has been done with the intent to
20 specifically eliminate plaintiff AquaStar as a viable competitor and threat to
21 Hayward's automatic pool cleaner/replacement parts business, and to
22 reduce competition in general. Hayward's overall anticompetitive scheme
23 consists of at least the following acts/conduct to be viewed as a whole:

24 (a) successfully threatened, intimidated and coerced actual
25 and potential purchasers of AquaStar pool cleaner products not to deal
26 with AquaStar;

27 (b) induced, organized and implemented a group boycott of or
28 concerted refusal to deal among buyers/distributors not to distribute or

1 purchase plaintiff AquaStar's automatic pool cleaner/replacement part
2 products; and

3 (c) conditioned the payment or allowance of discounts and
4 rebates provided on the purchase of Hayward pool equipment products,
5 including automatic pool cleaners/replacement parts, on an agreement not
6 to deal with or purchase competitive products/parts from AquaStar.

7 82. Exclusive dealing arrangements have the effect of inducing or
8 coercing a buyer to purchase most, or all, products for a period of time
9 from one supplier. The arrangement may take the form of a requirements
10 contract committing the buyer to purchase all (or a substantial portion) of
11 its requirements of a specific product only from one supplier. Such
12 unlawful arrangements also include pricing or rebate policies that create a
13 substantial disincentive to purchase products from competitive sources.

14 83. Exclusionary arrangements do not actually have to prescribe
15 exclusivity to be deemed unlawful under Section 3. Such "de facto"
16 arrangements, understandings and/or contracts are anticompetitive if they
17 create or maintain market power resulting in the exclusion of rivals.

18 84. Exclusionary arrangements or contracts can be found illegal
19 even though the contract/arrangement does not contain specific
20 agreements not to use the products of a competitor, if the practical effect is
21 to prevent such use or purchase. Further, contracts or arrangements
22 utilized by a monopolist that provide price discounts or rebates to induce a
23 buyer to purchase most, or all, of their product needs, but do not require
24 absolute exclusivity are also unlawful de facto exclusive dealing
25 arrangements.

26 85. Defendant Hayward's anticompetitive and exclusionary conduct
27 described herein is not motivated or driven by technological or efficiency
28 concerns, and has no valid or legitimate business justification. Rather, its

1 purpose and effect is to ensure that plaintiff AquaStar and other
2 competitive rivals in the relevant market cannot successfully invade or
3 erode defendant Hayward's dominant and entrenched market position.

4 86. During the relevant time period, defendant Hayward and plaintiff
5 AquaStar have both designed, manufactured, marketed and sold
6 residential swimming pool automatic suction-side pool cleaners and
7 associated replacement parts in the United States. The marketing,
8 distribution and sale of such products directly involves, and substantially
9 affects, interstate commerce. The violations of the Clayton Act alleged
10 herein adversely, directly and substantially affect the flow of such products
11 in interstate commerce.

12 87. The aforesaid conduct of Hayward has produced antitrust injury,
13 and unless enjoined by this Court, will continue to produce at least the
14 following anticompetitive, exclusionary and injurious effects upon
15 competition in interstate commerce:

16 (a) competition in the development of automatic pool cleaner
17 products/replacement parts has been substantially and unreasonably
18 restricted, lessened, foreclosed and eliminated;

19 (b) barriers to entry into the market have been raised;

20 (c) consumers choice has been, and will continue to be,
21 significantly limited and constrained as to selection, price and quality of
22 automatic pool cleaner products/replacement parts;

23 (d) consumer access to AquaStar's competitive products will
24 be artificially restricted and reduced and its products will continue to be
25 excluded from the market;

26 (e) the market for development and sale of automatic suction-
27 side pool cleaner products will continue to be artificially restrained or
28 monopolized; and

1 (f) Hayward will continue to charge supracompetitive prices to
2 the detriment of consumers.

3 88. Defendant Hayward's practices, described above, have
4 foreclosed competition in a substantial share of the relevant market and
5 have substantially lessened competition any or tended to create a
6 monopoly for Hayward in the relevant market.

7 89. Defendant Hayward's exclusionary agreements, arrangements
8 and/or contracts have caused antitrust injury to plaintiff AquaStar,
9 competition and consumers. Conduct that restricts consumer choice or
10 makes the market unresponsive to consumer preference harms consumers
11 and results in antitrust injury. When an agreement detrimentally changes
12 the market makeup and limits consumers' choice to one source of output
13 this causes cognizable antitrust injury of preventing its victims from making
14 free and unhindered choices between market alternatives.

15 90. Defendant Hayward's predatory and exclusionary conduct has
16 caused antitrust injury to plaintiff AquaStar, competition and consumers.

17 91. By reason of, and as a direct and proximate result of defendant
18 Hayward's practices and conduct, plaintiff AquaStar has suffered, and will
19 continue to suffer, financial injury to its business and property. As a result,
20 plaintiff has been deprived of revenues and profits it would have otherwise
21 made, suffered diminished market growth and sustained a loss of goodwill.
22 Plaintiff has not yet calculated the precise extent of its past damages and
23 cannot now estimate with precision the future damages that continue to
24 accrue, but when it does so, it will seek leave of the Court to insert the
25 amount of the damages sustained herein.

26 ///

27 ///

28 ///

FIFTH CAUSE OF ACTION**(Intentional Interference Prospective Economic
Advantage and Actual Contractual Relationships)**

92. Plaintiff AquaStar hereby alleges and incorporates by reference each allegation set forth in Paragraphs 1 through 91, as if set forth in full herein.

93. This Court has jurisdiction over this Fifth Cause of Action based on the doctrine of supplemental jurisdiction (28 U.S.C. § 1367) because this Fifth Cause of Action arises from the same transactions and from a common nucleus of operative facts as alleged in the first five federal causes of actions.

94. Plaintiff AquaStar has existing and valuable business relationships, as well as reasonable expectations of further and future relationships, with buyers/distributors of automatic suction-side pool cleaners/replacement parts.

95. Defendant Hayward was aware of these prospective business and actual contractual relationships and engaged in intentional and wrongful conduct designed or calculated to disrupt and interfere with those relationships.

96. Defendant Hayward's conduct in interfering with such prospective business and actual contractual relations is intentional, malicious and without justification. Hayward's conduct and overall scheme was undertaken solely to hinder, if not eliminate, competition so that Hayward can continue to reap supracompetitive prices and profits on automatic pool cleaners/replacement parts. Hayward's anticompetitive conduct was not privileged or excused and was without any legitimate business justification. Hayward has knowingly engaged in such wrongful conduct for the purpose of excluding competition and to deprive

1 consumers of the benefits of free and open competition.

2 97. Defendant Hayward's conduct was a substantial factor in
3 causing financial injury to plaintiff AquaStar and has rendered it more
4 difficult for plaintiff to remain and survive as a viable competitor.

5 98. Plaintiff AquaStar's business and goodwill has been, and will
6 continue to be, substantially injured by Hayward's conduct. Additionally,
7 actual and prospective customers of plaintiff AquaStar will continue to be
8 injured and harmed by Hayward's acts and practices. Although plaintiff
9 AquaStar has incurred substantial losses as a proximate result of the
10 foregoing acts, and will continue to incur substantial losses in the future as
11 well as its growth being negatively impacted, all such losses may be
12 difficult to calculate with precision. Therefore, in addition to any
13 recoverable damages proximately caused by Hayward's wrongful conduct,
14 plaintiff AquaStar also seeks a permanent injunction preventing Hayward
15 from continued interference in the future.

16 99. The intentional and disruptive conduct of defendant Hayward is
17 willful, malicious and oppressive. Consequently, an award of exemplary or
18 punitive damages in an amount sufficient to punish and deter Hayward is
19 justified.

20 **SIXTH CAUSE OF ACTION**

21 **(Unfair Competition in Violation of** 22 **Cal. Bus. & Prof. Code § 17200 et seq.)**

23 100. Plaintiff AquaStar hereby realleges and incorporates by
24 reference each allegation set forth in Paragraphs 1 through 99, as if set
25 forth in full herein.

26 101. This Court has jurisdiction over this Sixth Cause of Action
27 based on the doctrine of supplemental jurisdiction (28 U.S.C. § 1367)
28 because this Sixth Cause of Action arises from the same transactions and

1 from a common nucleus of operative facts as alleged in the first five federal
2 causes of action.

3 102. Section 17200 *et seq.* of the California Business & Professions
4 Code is written in the disjunctive and broadly covers three varieties of
5 unfair competition – acts that are unlawful or unfair or fraudulent. The
6 statute's intent and purpose is to protect both consumers and competitors
7 by promoting fair competition in commercial markets for goods and
8 services.

9 103. Plaintiff AquaStar is a "person" within the meaning of California
10 Business & Professions Code § 17201.

11 104. As alleged herein, defendant Hayward's conduct constitutes
12 "unfair" business practices. A practice may be deemed unfair even if not
13 specifically proscribed by some other law. Conduct that significantly
14 threatens or harms competition, or threatens an incipient violation of an
15 antitrust law, may be deemed to be "unfair."

16 105. As alleged herein, defendant Hayward's anticompetitive
17 conduct is also "unlawful." Within the meaning of § 17200, virtually any
18 violation of any civil or criminal federal, state or municipal, statutory,
19 regulatory, court-made or local law can serve as a predicate for an
20 "unlawful" claim. Defendant Hayward's violations of the federal antitrust
21 laws as alleged herein, satisfy the "unlawful" prong of § 17200.

22 106. By reason of, and as a direct and proximate result of defendant
23 Hayward's unfair and unlawful practices and conduct, plaintiff AquaStar
24 has suffered and will continue to suffer, financial injury to its business and
25 property.

26 107. Defendant Hayward's unfair and unlawful conduct has caused
27 harm to plaintiff AquaStar, competition and consumers.

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

6

7
8

9
10
11

12
13
14

15
16
17

18
19

20
21
22

23
24
25

26
27
28

1 8. That, pursuant to Section 4 of the Clayton Act (15 U.S.C. § 15),
2 plaintiff be awarded a reasonable attorneys' fee and costs of litigation;

3 9. That, pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26),
4 the anticompetitive, predatory and/or exclusionary conduct of defendant
5 Hayward be permanently enjoined;

6 10. That plaintiff AquaStar be awarded punitive or exemplary
7 damages on its tort claim;

8 11. That, pursuant to § 17203 of the California Business &
9 Professions Code, the unfair and/or unlawful business practices of
10 defendant Hayward be permanently enjoined;

11 12. That pursuant to Section 1021.5 of the California Code of Civil
12 Procedure, plaintiff be awarded reasonable attorneys' fees; and

13 13. For such other and further relief as the Court deems just and
14 proper.

15
16 Dated: August 10, 2011

BLECHER & COLLINS, P.C.
MAXWELL M. BLECHER
DONALD R. PEPPERMAN
JENNIFER S. ELKAYAM

17
18
19 By: 

20 MAXWELL M. BLECHER
Attorneys for Plaintiff
AquaStar Pool Products, Inc.
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff AquaStar hereby demands trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule 38-1.

Dated: August 10, 2011

BLECHER & COLLINS, P.C.
MAXWELL M. BLECHER
DONALD R. PEPPERMAN
JENNIFER S. ELKAYAM

By: 
MAXWELL M. BLECHER
Attorneys for Plaintiff
AquaStar Pool Products, Inc.

46320.1

BLECHER & COLLINS

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Consuelo B. Marshall and the assigned discovery Magistrate Judge is Patrick J. Walsh.

The case number on all documents filed with the Court should read as follows:

CV11- 6586 CBM (PJWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AQUASTAR POOL PRODUCTS, INC., a California
corporation,

PLAINTIFF(S)

v.

HAYWARD INDUSTRIES, INC., a New Jersey
corporation; HAYWARD POOL PRODUCTS, INC.,

DEFENDANT(S).

CASE NUMBER

CV11-06586(CBM(PJWx))

SUMMONS

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Maxwell M. Blecher, whose address is Blecher & Collins, P.C., 515 S. Figueroa St., Suite 1750, Los Angeles, CA 90071. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: August 10, 2011

By: _____

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) AQUASTAR POOL PRODUCTS, INC., a California corporation	DEFENDANTS HAYWARD INDUSTRIES, INC., a New Jersey corporation; HAYWARD POOL PRODUCTS, INC.
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Maxwell M. Blecher (SBN 26202) Donald R. Pepperman (SBN 109809) BLECHER & COLLINS, P.C. 515 S. Figueroa St., Suite 1750 Los Angeles, CA 90071 213-622-4222	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

- | PTF | DEF | PTF | DEF |
|---|----------------------------|---|---------------------------------------|
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of This State | | Incorporated or Principal Place of Business in this State | |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen of Another State | | Incorporated and Principal Place of Business in Another State | |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country | | Foreign Nation | |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No☐ MONEY DEMANDED IN COMPLAINT: \$ _____**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

1) SECTION TWO OF THE SHERMAN ACT - ACTUAL MONOPOLIZATION; 2) SECTION TWO OF THE SHERMAN ACT - ATTEMPT TO MONOPOLIZE; 3) SECTION ONE OF THE SHERMAN ACT; 4) SECTION 3 OF THE CLAYTON ACT; 5) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE AND ACTUAL CONTRACTUAL RELATIONS; AND 6) CAL. BUS. & PROF. CODE § 17200 et seq. - UNFAIR COMPETITION

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
--	--	--	---	---	---

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

VIII(a). **IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). **RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	San Diego, California

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Union County, New Jersey

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

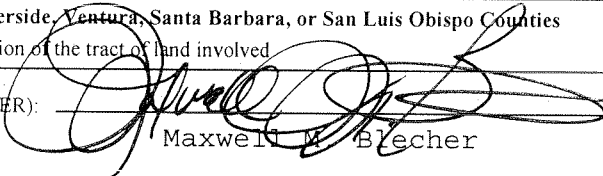
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Ventura, California	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):


Maxwell M. Blecher

Date August 10, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))